

Message Text

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ORIGIN TRSE-00

INFO OCT-01 EUR-25 IO-14 ISO-00 EB-11 L-03 CIAE-00 COME-00

DODE-00 DOTE-00 FMC-04 INR-10 NSAE-00 RSC-01 CG-00

COA-02 DLOS-07 SWF-02 PM-07 NSC-07 SP-03 SS-20 /117 R

DRAFTED BY TREAS:RGOODMAN:EW

APPROVED BY EB/TT/MA:RWEBB

TREAS:RVKORP

EB/IFD/OMA:MMINNIES

EUR/RPE:FKINNELLY

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P R 040045Z JUN 74

FM SECSTATE WASHDC

TO USMISSION OECD PARIS PRIORITY

INFO USMISSION GENEVA

AMEMBASSY LONDON

LIMITED OFFICIAL USE STATE 116600

E.O. 11652:N/A

TAGS: EFIN, ETRN, OECD

SUBJECT: GUIDANCE FOR JUNE 5 IC MEETING ON U.N. CODE OF
CONDUCT FOR LINER CONFERENCES

REF: (A) OECD PARIS 11848 (B) OECD PARIS 12192

GUIDANCE REQUESTED REF (A) FOLLOWS:

1. WE WOULD HOPE THAT OTHER COUNTRIES THAT OPPOSED THE
CODE OF CONDUCT FOR LINER CONFERENCES BUT WHICH HAVE NO
RESERVATION ON OECD INVISIBLE CODE SHIPPING PROVISIONS
CAN BE PERSUADED TO TAKE LEAD IN ATTEMPTING TO OBTAIN IC
FINDING OF INCOMPATIBILITY. U.S. EXPERT SHOULD CONFER
WITH IC EXPERTS FROM THOSE COUNTRIES WHICH VOTED AGAINST
CODE (U.K., SCANS AND SWITZERLAND) AND GREECE (WHICH
ABSTAINED) TO DEVELOP A STRATEGY SEEKING TO ACHIEVE
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APPROPRIATE FORMAL IC REPORT TO THE COUNCIL WITH STRONG

FINDING THAT INTENT AND ANY IMPLEMENTATION AFFECTING OECD MEMBERS OF UN LINER CODE WOULD BE INCONSISTENT WITH THEIR OBLIGATIONS UNDER INVISIBLES CODE. FOLLOWING ARE TALKING POINTS FOR CORRIDOR DISCUSSION AND IC MEETING.

(A) BASIC THRUST OF LINER CODE IS TO LIMIT COMPETITION IN SHIPPING, WHILE NOTE 1 IN INVISIBLES CODE ANNEX A MAKES CLEAR THAT "LIBERAL AND COMPETITIVE COMMERCIAL AND SHIPPING PRACTICES AND PROCEDURES SHOULD BE FOLLOWED

IN INTERNATIONAL TRADE"; (B) CARGO-SHARING PROVISIONS, AS NOTED PARA 3 REF (B), WOULD CONTRAVENE NONDISCRIMINATION ARTICLE OF INVISIBLES CODE (ARTICLE 9); (C) CARGO-SHARING COULD BE INCONSISTENT WITH MEMBER'S OBLIGATION TO GRANT AUTHORIZATIONS REQUIRED SO THAT RESIDENTS WITHIN A MEMBER COUNTRY CAN FREELY AVAIL THEMSELVES OF AND PAY FOR ALL SERVICES IN CONNECTION WITH INTERNATIONAL MARITIME TRANSPORT; AND (D) NO OECD MEMBER HAS A RESERVATION WHICH WOULD COVER CARGO-SHARING.

2. IF ASKED TO RECONCILE U.S. POSITION ON LINER CODE WITH U.S. UNWILLINGNESS TO PERMIT SECOND SENTENCE OF NOTE 1 OF INVISIBLES CODE TO APPLY TO U.S., U.S. EXPERT MAY STATE THAT, WHEN THIS SENTENCE WAS APPROVED IN THE OECD PREPARATORY COMMITTEE, U.S. WAS NOT IN DISAGREEMENT WITH THE BASIC THRUST OF NOTE 1, BUT WAS OBLIGED TO INDICATE THAT CERTAIN CONSIDERATIONS OF NATIONAL SECURITY WERE PARAMOUNT FOR US. (CEDTO 206 OF MAY 15, 1961, INDICATES THAT U.S. COULD NOT AGREE, FOR EXAMPLE, THAT "NORMAL COMMERCIAL CONSIDERATIONS ALONE SHOULD DETERMINE THE METHOD AND FLAG OF SHIPMENT BECAUSE NATIONAL SECURITY CONSIDERATIONS WERE OVERRIDING.") THUS, FACTORS UNDERLYING OUR INABILITY TO HAVE SECOND SENTENCE OF NOTE 1 APPLY TO U.S. ARE IRRELEVANT AND EXTRINSIC TO ISSUES PRESENTED BY LINER CODE. KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MARINE TRANSPORTATION, GUIDANCE INSTRUCTIONS, INVISIBLES (BALANCE OF PAYMENTS), MEETINGS, CARGO SHIPS
Control Number: n/a
Copy: SINGLE
Draft Date: 04 JUN 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: cunninfx
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE116600
Document Source: CORE
Document Unique ID: 00
Drafter: RGOODMAN:EW
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740140-1180
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740676/aaaacnsi.tel
Line Count: 96
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN TRSE
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: (A) OECD PARIS 11848 (B) OECD PARIS, 12192
Review Action: RELEASED, APPROVED
Review Authority: cunninfx
Review Comment: n/a
Review Content Flags:
Review Date: 22 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <22 APR 2002 by cunninfx>; APPROVED <19 FEB 2003 by cunninfx>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: GUIDANCE FOR JUNE 5 IC MEETING ON U.N. CODE OF CONDUCT FOR LINER CONFERENCES
TAGS: EFIN, ETRN, OECD, UN
To: OECD PARIS
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005